

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0165, Glenn Rich v. Philip Shevett, the court on October 4, 2007, issued the following order:**

The plaintiff, Glenn Rich, appeals an order of the trial court granting summary judgment to the defendant, Philip Shevett. Rich was allegedly injured by a dog owned by Shevett. Rich argues that the trial court erred because: (1) the question of whether Rich was a keeper of the dog under RSA 466:19 is a question of fact for the jury; and (2) he was not a keeper of the dog under RSA 466:19. We affirm.

In reviewing the trial court's grant of summary judgment, we consider the affidavits, and all inferences properly drawn from them, in the light most favorable to the non-moving party. Marikar v. Peerless Ins. Co., 151 N.H. 395, 397 (2004). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. *Id.* We review the trial court's application of the law to the facts *de novo*. *Id.*

In a case construing the predecessor statute to RSA 466:19, we held that the use of the word "kept" "implies more than the mere harboring of a dog for a limited purpose or time." Raymond v. Bujold, 89 N.H. 380, 382 (1938). "It implies rather the exercise of a substantial number of the incidents of ownership by one who, though not the owner, assumes to act in his stead." *Id.* "One becomes the keeper of a dog only when he, either with or without the owner's permission, undertakes to manage, control or care for it as dog-owners in general are accustomed to do." *Id.*

The trial court found that Rich was a boarder at Shevett's house from September 2001 through December 2004; Rich had his own room and shared access to the rest of the house. In December 2001, Shevett was given a puppy, Colby. Rich alleged that in September 2002, he returned from a walk and noticed that Colby wanted to go out; after he put a leash on Colby, Colby unexpectedly bolted, causing Rich to fall on the stairs and incur injuries.

The trial court found that while there was no formal arrangement for Rich to walk Colby, he would do so when it appeared the dog needed to go outside; Rich generally walked Colby once or twice a week from the time Colby was a puppy. In doing so, Rich put a leash on Colby and walked him rather than simply letting him go outside unattended. Citing Rich's deposition wherein he described Colby as his companion and provided information about Colby's yearly

visits to the veterinarian and reaction when he saw a cat or squirrel, the trial court found that Rich's knowledge of the dog's characteristics and behavior was typical of an owner.

Considering the evidence in the light most favorable to the plaintiff, we find no error.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**